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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/228,821 01/11/99 WENZEL

D 3596.02-1

EXAMINER

IM52/0601

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JOHNSON, J

ART UNIT PAPER NUMBER

22

1764
DATE MAILED:

06/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/228,821	WENZEL, DEBORAH
	Examiner	Art Unit
	Jerry D. Johnson	1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 March 2001.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 59-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,59-64,66-68,70,71 and 73-77 is/are rejected.
- 7) Claim(s) 65, 69 and 72 is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) Interview Summary (PTO-413) Paper No(s). _____.
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 59, 60, 62-64, 66-68, 70, 71 and 73-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenzel et al.

Wenzel et al, U.S. Patent 4,083,698, teach liquid fuel compositions comprising a mixture of hydrocarbons, such as gasoline, diesel fuel, or fuel oil; water; preferably a water-soluble alcohol; and a combination of surface-active agents (column 1, lines 19-24). The fuel composition has a viscosity similar to that of a hydrocarbon fuel itself (column 2, lines 63-65). The combination of surface-active agents comprises (1) a long-chain fatty acid salt, or, more preferably an ammonium or sodium long-chain fatty acid salt, or mixtures thereof; (2) a free unsaturated long-chain fatty acid, or a mixture of a free unsaturated organic acid and a free saturated long-chain fatty acid; and (3) a non-ionic surfactant typified by ethylene oxide condensation products and esterification products of a fatty acid with ethylene oxide (column 3, lines 30-38). Although oleic acids is most preferred, both as the free acid, and in combination with the ammonium and sodium hydroxide to form the salts, other unsaturated acids having from about 12-18 carbon atoms, such as linoleic may be used as well as mixtures of these acids. Also, saturated long-chain fatty acids having from about 12-18, such as stearic palmitic, myristic or lauric acids or mixtures thereof, may be used in combination with greater amounts of unsaturated acids (column 3, lines 49-52). The ethylene oxide condensation products which may be used include fatty alcohols having 12 to 18 carbon atoms (column 4, lines 7-38). Although methanol

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is preferred, the other water-soluble alcohols, such as ethanol, isopropanol, and mixtures of these, can be used (column 5, lines 54-56). While the amount of surface-active agents required must depend on the amounts of water and alcohol used in the fuel compositions, it is generally preferred that the ratio of the condensation products to the ammonium and/or mixture of ammonium and sodium salts of the saturated or unsaturated long-chain fatty acids be in the range of 1:2 to 3:1 by weight (column 5, line 66 to column 6, line 4). The alcohol can be added as a solution in water or it can be added separately (column 8, lines 10-13). Column 17, lines 15-19, teach that the addition of either ethanol or isopropanol stabilized emulsions at -24° C and that water or methanol could be added by neither one of those stabilized the emulsion unless ethanol or isopropanol was also added.

While Wenzel et al differ from the instant claims in not requiring the presence of both ethanol and a straight or branched chain alcohol having between 3 and 5 carbon atoms, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include both ethanol and isopropanol in a fuel composition as taught by Wenzel et al because Wenzel et al specifically teach that mixtures of alcohols may be used.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 61 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 61 improperly recites "in subpart (b) the alcohol of with the proviso that". See claim 61, line 7.

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Applicant's arguments and declaration filed March 22, 2001 have been fully considered but they are not persuasive.

Applicant argues

[t]he first and most apparent problem concerning the Wenzel et al patent especially as it relates to diesel fuel/other distillate fuels is its lack of lower alcohols C4-C5, and especially its lack of middle alcohols C6-C12.

Without the presence of these alcohols, especially the C8 alcohols, the invention relies entirely on ethoxylated alcohols and neutralized fatty acids for its surfactant portion, necessitating a high concentration of both in order to produce a stable total fuel composition. (REMARKS, page 11).

Applicant's argument lacks merit.

Applicant's claims do not require a C4-C5 or C6-C12 alcohol. Additionally, claim 1, the only independent claim, employs the transitional term "comprising". In using the transitional word "comprising," applicant renders the claimed composition open to the presence of additional, unrecited materials. *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 802 (CCPA 1981). Accordingly, applicant's claims do not exclude the ethoxylated alcohols of Wenzel et al.

Claims 65, 69 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 61 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

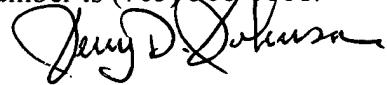
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry D. Johnson whose telephone number is (703) 308-2515. The examiner can normally be reached on 6:00-3:30, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knodel can be reached on (703) 308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-5408 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.



Jerry D. Johnson
Primary Examiner
Art Unit 1764

JDJ
May 31, 2001